

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

RECEIVED

JAN 04 2005

Appeal of Upper IPC Dam

Docket No.: 04-05 WC

**DEPARTMENT OF ENVIRONMENTAL SERVICES' OBJECTION TO
APPELLANT'S MOTION TO DISMISS**

NOW COMES the State of New Hampshire, Department of Environmental Services, by and through its counsel, the Office of the Attorney General, Environmental Protection Bureau, and objects to the Appellant's Motion to Dismiss and in support thereof states as follows:

1. This appeal involves an Administrative Order ("AO") issued by the Department of Environmental Services (DES) to Freudenberg NOK ("the Appellant"), concerning the condition of the Upper IPC dam in Bristol, New Hampshire.
2. The Appellant appealed the AO asserting, among other arguments, that it is not the owner of the dam in question. The appeal is currently pending before the Water Counsel.
3. Via its Motion to Dismiss, the Appellant again argues that it is not the owner of the dam in question. No new facts are alleged, nor legal authority cited within the motion to support its contention. The Appellant's Motion to Dismiss is simply a reassertion of an argument already raised within the appeal, and, therefore, must be denied.

4. Furthermore, the State respectfully asserts that the Water Council does not have jurisdiction to determine ownership of the dam and that, as the Appellant denies it is the owner of the dam, determination of disputed ownership of property is an issue properly addressed via a Declaratory Judgment action filed in Superior Court. *See*, RSA 491:22; 498:1; 498:5-a; 498:5-d. As such, the Motion to Dismiss must be denied.

WHEREFORE, the State of New Hampshire, Department of Environmental Services respectfully requests that:

- A. The Appellant's Motion to Dismiss be Denied; and,
- B. For all other relief as is just and equitable.

Respectfully submitted,

State of New Hampshire
Department of Environmental
Services.

By its attorneys,
Kelly A. Ayotte,
Attorney General,

COPY

Dated: January 4, 2005

Anthony I. Blenkinsop
Office of the Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301
(603) 271-3679

Certificate of Service

I certify that a copy of the foregoing was forwarded on the above date, first class mail, postage prepaid to Nicholas J. Lazos, Esq.

COPY
Anthony I. Blenkinsop